**Editor's note: Reconsideration denied by order dated July 22, 1981**

JOHN J. SCHNABEL

IBLA 80-579 Decided September 30, 1980

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void. AA-33326 through AA-33330.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

   Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

2. Administrative Procedure: Hearings--Mining Claims: Hearings--Rules of Practice: Hearings

   In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

APPEARANCES: J. P. Tangen, Esq., Robertson, Monagle, Eastaugh & Bradley, P.C., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a decision dated April 1, 1980, by the Alaska State Office, Bureau of Land Management (BLM), declaring appellant's five placer mining claims, 1/ all located in 1957, abandoned and void for failure to comply with filing requirements under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), which provides:

> (a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The decision appealed from states that appellant failed to file a 1979 affidavit of assessment work or a notice of intention to hold the claims by October 22, 1979.

In his initial response to the decision, appellant wrote BLM as follows:

> On Sept. 27, 1979 I sent you [an] identification map & annual affidavit of annual labor. I did not include the 1979 year as it was in the recording office until Sept. 11th. You returned my affidavits of annual labor & told me you wanted location notices not affidavits. I then sent the location notices which you received on Oct. 2, 1979 and you returned to me a receipt for the filing fee.

Appellant's affidavit of annual labor for the recording year ending September 1, 1979, is included in the case file. It is date-stamped September 11, 1979, by the Haines Recording District, Alaska, and April 14, 1980, by the BLM office in Anchorage.

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1/ The claims located in the Porcupine Mining District are: Black Bear #1, Black Bear, W. E. Placer, F.E. #2 -- Two, and F.E. #3 -- Three. In a memorandum of August 11, 1980, the Acting State Director requests remand because "it now appears that the mining claims * * * lie totally within lands which were conveyed to the State of Alaska under patent No. 50-65-0235 dated July 20, 1964 * * *." Because of the disposition of the case herein, the remand is not appropriate.

In his statement of reasons appellant asserts, quoting from the above letter, that "[i]n the fall of 1979 [he] * * * filed with the BLM those documents required by law * * *. Specifically, on September 27, 1979 [he] filed 'map and evidence of assessment and $5.00 for each claim.'" Appellant says he attempted in good faith to comply with the recording requirements 2/ and "[a]t one time or another prior to October 22, 1979, all required documentation was filed with BLM." Appellant asserts that BLM required him to file his location notices before his affidavits of assessment work, and that this is in contravention of the regulations which simply require the filing of both types of documents prior to October 22, 1979.

Appellant contends that the decision appealed from deprives him of property without due process and equal protection of the laws. He contends that under Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), he was entitled to some kind of notice and some kind of hearing before the BLM decision depriving him of property is issued. Appellant cites other cases standing for the proposition that mining claims are property interests entitled to due process protection.

[1] The regulation above cited (43 CFR 3833.2-1(a)) requires that owners of mining claims located prior to October 21, 1976, on Federal lands shall have filed in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recordation, whichever is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. This requirement is mandatory, and failure to comply therewith must result in a conclusive finding that the claims have been abandoned. G. H. Monk, 47 IBLA 213 (1980).

Appellant concedes in his initial letter that he did not timely file the 1979 affidavit of assessment work. His general assertion to the contrary in his statement of reasons is not borne out by the record. In any event, as one dealing with the Government, appellant is presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). See Robert Willing, 48 IBLA 39, 41 (1980). The crucial fact upon which appellant's claims were deemed abandoned and void is that he failed to timely file his affidavit of assessment work for 1979, clearly required by the above-quoted regulation. The consequence of such failure is mandated by FLPMA and 43 CFR 3833.4(a) which provides:

2/ Appellant states he has worked the claims since 1946 and invested over $50,000.

> (a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

[2] Appellant's constitutional arguments have been addressed by this Board in similar cases. In Dorothy Smith, 44 IBLA 25 (1979), we stated:

> [E]ven if due process were construed to require the Department of the Interior to afford appellants some form of hearing prior to declaring their mineral location null and void, the requirement is satisfied by appellants' appeal to this Board. It is well established that where there are no disputed questions of fact and the validity of a claim turns on the legal effect to be given facts of record which show the status of the land when the claim is located, no hearing before an Administrative Law Judge is required. [3/] United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432 at 453 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966), aff'g The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958); H. B. Webb, supra [34 IBLA 362 (1978)]; Roy R. Cummins, 26 IBLA 223 (1976); David Loring Gamble, 26 IBLA 249 (1976); Vearl Martin, 18 IBLA 234 (1974).

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3/ Gellhorn and Byse in their "Administrative Law Cases and Comments" Treatise (1970), treat at p. 499 the subject as follows:

"(4) A hearing to take evidence as is done in a trial at law is an obviously silly waste of time if facts are not in dispute. The courts, in their own proceedings, rule on motions to dismiss (or whatever may be the local equivalent of a demurrer); when they do so, they assume a set of facts, without receiving and passing upon evidence, and then decide whether the assumed facts add up to something or to nothing. The courts also enter summary judgments when the factual allegations of a party have not been materially controverted by his opponent. Trial hearings may permissibly be omitted in administrative proceedings at least as readily as in their judicial counterparts, when the only things to be determined are the legal consequences of uncontested facts. See, e.g., Persian Gulf Outward Freight Conference v. Federal Maritime Commission, 375 F.2d 335 (D.C. Cir. 1967); Birkenfield v. United States, 369 F.2d 491 (3d Cir. 1966); Railway Express Agency, Inc. v. Civil Aeronautics Board, 345 F.2d 445 (D.C. Cir.), cert. denied 382 U.S. 879 (1965) National Labor Rel F.2d 170 (9th Cir. 1963); Joe L. Smith, Jr., Inc., 1 F.C.C.2d 666 (1965); but cf. Kirby v. Shaw, 358 F.2d 446 (9th Cir. 1966)." (Emphasis supplied.)

See also Alva Rockwell, 47 IBLA 272 (1980). Pence v. Kleppe, supra, involving the due process rights of Alaska Native allotment applicants, dealt with interests substantially different from those of owners of unpatented mining claims and Pence concerned unresolved questions of fact.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 4/

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

4/ By memorandum of August 11, 1980, BLM asserted that the lands on which the mining claims were situated have been patented under patent No. 50-65-0235 of July 20, 1964, title, State of Alaska. In view of our disposition of the case, this factor does not affect the result.